

CCRB INVESTIGATIVE RECOMMENDATION

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|---|-------------------------------------|--|---|---|---------------------------------|
| Investigator: Maxwell Jaffe | Team: Team # 4 | CCRB Case #: 201405776 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 06/12/2014 12:39 AM | Location of Incident: § 87(2)(b) | Precinct: 75 | 18 Mo. SOL 12/12/2015 | EO SOL 12/12/2015 | |
| Date/Time CV Reported Thu, 06/12/2014 7:27 AM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Thu, 06/12/2014 7:27 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. SSA Robert Martinez | 01369 | 922716 | 075 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Todd Hansen | 13329 | 949083 | 075 PCT |
| 2. POM Anthony Donaldson | 08286 | 941671 | 075 PCT |
| 3. POM David Pralgo | 23516 | 916465 | 075 PCT |
| 4. POM Radoslaw Terepka | 14042 | 926200 | 075 PCT |
| 5. POM Gregg Minardi | 04986 | 940475 | 075 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.SSA Robert Martinez | Force: Sgt. Robert Martinez pointed his gun at § 87(2)(b) | |
| B.SSA Robert Martinez | Abuse: Sgt. Robert Martinez stopped § 87(2)(b) | |
| C.SSA Robert Martinez | Force: Sgt. Robert Martinez fired his gun at § 87(2)(b) | |
| D.SSA Robert Martinez | Abuse: Sgt. Robert Martinez threatened § 87(2)(b) with the use of force. | |
| E.SSA Robert Martinez | Discourtesy: Sgt. Robert Martinez spoke rudely to § 87(2)(b) | |
| F.SSA Robert Martinez | Discourtesy: Sgt. Robert Martinez acted rudely toward § 87(2)(b) | |

Case Summary

On June 12, 2014, at approximately 12:39 a.m., § 87(2)(b) and four friends left a house on § 87(2)(b) in Brooklyn and were walking to a store on Shepherd Avenue and Pitkin Avenue. § 87(2)(b) saw a “black Impala” approaching while he stood at the corner of § 87(2)(b). The individual driving the car was Sgt. Robert Martinez. Sgt. Martinez stopped his vehicle and got out of the vehicle, at which point § 87(2)(b) and his friends scattered and ran in different directions. Sgt. Martinez chased § 87(2)(b) who ran to the front door of a house located at § 87(2)(b) and rang the doorbell. While ringing the doorbell, he turned around and saw Sgt. Martinez with his gun pointed at him (**Allegation A and B**). § 87(2)(b) turned back around to face the door and allegedly heard Sgt. Martinez fire a shot (**Allegation C**). Sgt. Martinez allegedly told § 87(2)(b) “Don’t move or I’ll shoot you. I’ve been waiting to shoot you.” § 87(2)(b) also alleged that Sgt. Martinez said, “Put the phone down. Don’t you fucking move. I swear I’ve been fiending to shoot you. I’ll shoot.” (**Allegation D and E**). § 87(2)(b) then lay down on his back with his hands out to the side and his phone in his right hand. Sgt. Martinez allegedly kicked the phone out of § 87(2)(b) hand (**Allegation F**). With his gun pointed towards § 87(2)(b), Sgt. Martinez, grabbed § 87(2)(b) right shoulder and turned him over. After about five minutes, other officers arrived on the scene, at which point § 87(2)(b) was arrested and placed into the back of a police vehicle. § 87(2)(b) CCRB Testimony, encl. 11A-11D)

§ 87(2)(b) was arrested as a result of the incident and was charged with criminal possession of a weapon. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] (encl. 46A-46E)

This case was reassigned to Investigator Maxwell Jaffe on January 9, 2015, on account of Investigator Andrew Guinan’s departure from the agency.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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§ 87(2)(b) A notice of claim inquiry was submitted on March 10, 2015 and will be added to the case file upon its receipt (encl. 52A).

Civilian and Officer CCRB Histories

- This is § 87(2)(b) first CCRB complaint (encl. 6A).
- Sgt. Martinez has been a member of the NYPD for 16 years. He has had 26 previous CCRB cases, with 50 allegations against him. Six of those allegations have been substantiated. In CCRB case number 200205713, an allegation of Discourtesy-Word was substantiated. In CCRB case number 200704280, allegations of Force – Physical Force and Abuse – Threat of Force were substantiated. In CCRB Case number 201101407, allegations of Abuse – Stop and Abuse – Frisk were substantiated. In CCRB case number 201310387, an allegation of Force – Physical Force was substantiated. (encl. 4A-4D).

Potential Issues

In his CCRB testimony, § 87(2)(b) stated that, at the time of the incident, he was with a group of four friends. § 87(2)(b) only knew the first and last name of one of the friends he was with, § 87(2)(b), but did not know § 87(2)(b) address. A Lexis-Nexis search for “§ 87(2)(b)” returned 25 results, only 6 with current addresses listed in New York City. None of these addresses were located in Brooklyn. As a result, without further identifying information for § 87(2)(b) no contact attempts were made. § 87(2)(c)

§ 87(2)(b) did not provide contact information for three of the friends he was with on the night of the incident. Thus, without contact information or the full names of the friends, no contact attempts could be made.

A Lexis-Nexis search was also performed for residents of § 87(2)(b) in Brooklyn, which returned 17 listings. 10 of those listings had current addresses for § 87(2)(b), and were contacted via mail, and phone when a phone number was available. All of the individuals who responded to the contact attempts did not witness the incident. Therefore, there were no witnesses interviewed for this investigation.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) described the subject officer as a white male, in his 40's, about 5'9" tall, with a bald head and blue eyes. Sgt. Martinez, who is § 87(2)(b) years old, standing 6'0" tall, with light skin and a balding head, closely matches the description provided by § 87(2)(b). In addition, in his CCRB testimony, Sgt. Martinez acknowledged interacting with § 87(2)(b) and stated that he was the only officer present for the incident.

Allegation A – Force: Sgt. Robert Martinez pointed his gun at § 87(2)(b)

Allegation B – Abuse of Authority: Sgt. Robert Martinez stopped § 87(2)(b)

It is undisputed that Sgt. Martinez pointed his gun and stopped § 87(2)(b) § 87(2)(g)

In his CCRB testimony, § 87(2)(b) stated that while he and four of his friends were walking to a store on Shepard Avenue and Pitkin Avenue in Brooklyn, Sgt. Martinez, driving an unmarked police vehicle, stopped his vehicle about three inches away from § 87(2)(b) and exited the vehicle.

Sgt. Martinez did not say anything when he approached, but § 87(2)(b) and his friends started “scattering” and ran in different directions. § 87(2)(b) stated that he fled because he recognized Sgt. Martinez and knew that he did “greasy stuff,” including going into houses without warrants.

Sgt. Martinez chased after § 87(2)(b) and did not pursue the other individuals. § 87(2)(b) ran to a house located at § 87(2)(b). As he ran up the stairs, he did not throw anything out of his pockets. § 87(2)(b) knows someone that lives on the first floor of the house and rang their doorbell. While he was ringing the doorbell, he turned around and saw that Sgt. Martinez had his gun drawn. Sgt. Martinez told § 87(2)(b) “Don’t move.” § 87(2)(b) heard Sgt. Martinez fire a shot, at which point he sat down on the stairs. Sgt. Martinez had his gun pointed towards § 87(2)(b) § 87(2)(b) lay down on his back with his hands out to the sides and a cell phone in his right hand. Sgt. Martinez walked up the stairs and kicked the phone out of § 87(2)(b) hand. He grabbed § 87(2)(b) right shoulder and turned him over with one hand. While he turned § 87(2)(b) over, Sgt. Martinez still had his gun pointed towards § 87(2)(b) § 87(2)(b) did not see him ever put the gun away. Eventually, additional unidentified officers arrived on the scene and handcuffed § 87(2)(b) (§ 87(2)(b) CCRB testimony, encl. 11A-11D)

Sgt. Martinez contradicted § 87(2)(b) account of the incident and stated in his CCRB testimony that he was stopped at a stop light at the corner of § 87(2)(b) when he saw a group of approximately 10 individuals approaching him. Sgt. Martinez knew some of the individuals in the group and described them as, “a very bad, bad group of kids - a drug gang from § 87(2)(b) As the light turned green, one of the individuals, § 87(2)(b) quickly turned off from the group and walked up a set of stairs to the front porch of a house, the address of which Sgt. Martinez believed to be § 87(2)(b). Sgt. Martinez recognized § 87(2)(b) as someone who “runs with a guy, § 87(2)(b) who’s a big drug dealer.” § 87(2)(b) s name has been brought up in other investigations.

Sgt. Martinez continued to watch § 87(2)(b) as he drove by and observed § 87(2)(b) pace back and forth, and pull on the two doorknobs of the house’s two separate front doors multiple times. Sgt. Martinez knew from his prior investigations that § 87(2)(b) did not live at the house and found § 87(2)(b) actions “very suspicious” given the time of day, § 87(2)(b) s “history,” and the “group’s history.”

Sgt. Martinez also stated that the area where the incident occurred is “violent” and that he has made gun arrests and executed search warrants in the same area.

After observing § 87(2)(b) for approximately one minute, Sgt. Martinez decided to approach § 87(2)(b) with the intent to talk to him because “his behavior seemed completely erratic” and to see “what, if anything, was going on.”

Sgt. Martinez exited his vehicle and started walking towards § 87(2)(b). § 87(2)(b) turned his back on Sgt. Martinez and began reaching into the front of his waistband with his right hand. Sgt. Martinez stated that he feared for his safety and thought that § 87(2)(b) was going to pull out a gun. In response, Sgt. Martinez “pulled” his firearm “on” § 87(2)(b) with the intention to stop § 87(2)(b) from reaching in his waistband. Sgt. Martinez told § 87(2)(b) to “stop doing that” and to take his hands out of his waistband. Sgt. Martinez then saw § 87(2)(b) drop an unknown dark object over the porch bannister and heard the object land on the ground with a “big clunk”, like “a metal object hitting the ground.” § 87(2)(b) then turned around and sat down on the top step. Sgt. Martinez told § 87(2)(b) to turn around and lay on his stomach, which § 87(2)(b) complied with. Sgt. Martinez then approached § 87(2)(b) and, as he did so, he requested back up. He then returned his firearm to his holster and placed § 87(2)(b) in handcuffs. Upon the arrival of the responding officers, Sgt. Martinez looked over the porch bannister to see what the object was that § 87(2)(b) had dropped, at which point Sgt. Martinez saw that it was a firearm. Once § 87(2)(b) was placed into a police vehicle, Sgt. Martinez recovered the firearm (Sgt. Martinez CCRB testimony, encl. 16A-16C).

Police Department v. Gliner (OATH Index 955/00) states that an officer is permitted to draw and point his/her firearm at another person if he/she has reasonable fear for his/her own or another’s safety. Further, *People v. Benjamin*, determines that an officer need not “await the glint of steel before he can act to preserve his safety.” (*Police Department v. Gliner*, encl. 1A-1T; *People v. Benjamin*, encl. 2A-2D)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Sgt. Robert Martinez fired his gun at § 87(2)(b)

§ 87(2)(b) alleged that, while on the doorstep of § 87(2)(b) ringing the doorbell, § 87(2)(b) turned around and saw that Sgt. Martinez had his gun drawn. Sgt. Martinez “stayed down off the stairs” and told § 87(2)(b) “Don’t move.” § 87(2)(b) turned back around to face the door and heard Sgt. Martinez fire a shot. § 87(2)(b) was not looking at Sgt. Martinez when he fired the shot. § 87(2)(b) was not hit by the shot and did not know where the shot hit. § 87(2)(b) CCRB testimony, encl. 11A-11D)

Sgt. Martinez denied firing his gun during his interaction with § 87(2)(b). A Firearms Discharge Report provided from the 75th Precinct § 87(2)(g), showing that no firearms were reported discharged during the arrest of § 87(2)(b) (Sgt. Martinez CCRB testimony, encl. 16A-16C)

A SPRINT report for time and location of the incident showed that no calls were made to report shots fired (encl. 34A-34H).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: Sgt. Robert Martinez threatened § 87(2)(b) with the use of force.

Allegation E – Discourtesy: Sgt. Robert Martinez spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that, during the incident, Sgt. Martinez told him, “Don’t move or I’ll shoot you. I’ve been waiting to shoot you.” § 87(2)(b) also stated that Sgt. Martinez said, “Put the phone down. Don’t you fucking move. I swear I’ve been fiending to shoot you. I’ll shoot.”

Sgt. Martinez denied threatening to shoot § 87(2)(b) or threatening him with the use of force in any capacity. Sgt. Martinez also denied using any profanity in his interaction with § 87(2)(b)

§ 87(2)(g)

Allegation F – Discourtesy: Sgt. Robert Martinez acted rudely to § 87(2)(b)

§ 87(2)(b) alleged that, while Sgt. Martinez was pointing his firearm at him, § 87(2)(b) lay down on the porch on his back with his hands out to both sides and a cell phone in his right hand. Sgt. Martinez walked up the stairs and kicked the cell phone out of § 87(2)(b) hand.

Sgt. Martinez denied the allegation. Sgt. Martinez also denied ever removing any objects from § 87(2)(b)'s hands and also denied seeing § 87(2)(b) holding a cell phone in his hands at any point.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date